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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE RAMOS IBARRA,

Defendant and Appellant.

B207088

(Los Angeles County
Super. Ct. No. PA060330)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Barbara M. Scheper, Judge.

Rachel Lederman, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Jose Ramos Ibarra appeals from the judgment entered following his plea of guilty to the sale or transportation of cocaine (Health & Saf. Code, § 11352, subd. (a)). The trial court granted Ibarra three years probation on the condition he serve 180 days in county jail. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*¹

At approximately 8:50 p.m. on October 31, 2007, Los Angeles Police Officer Thomas Eiman was working in plain clothes as an undercover narcotics officer near the intersection of Parthenia Street and Memory Park. Ibarra approached Eiman and “asked what [he] wanted.” Eiman told Ibarra that he was waiting for someone to “bring [him] a 20.”² Eiman had already “come to an agreement” with an individual who was to supply him with \$20 worth of rock cocaine and he was waiting for the individual to arrive. In the meantime, Ibarra told Eiman that if his contact person did not come soon, that he, Ibarra, could supply Eiman with what he wanted. Ibarra then told Eiman that he would be at the corner of Noble and Parthenia. Eiman told Ibarra that he was going to wait a bit longer, but that if his contact did not come back, Eiman would come down and make a deal with Ibarra.

Ibarra stayed in the area, standing a few feet away from Eiman. Finally, Eiman approached Ibarra, told him he did not wish to wait any longer and asked Ibarra to “hook [him] up with that 20.” Ibarra then “spit out some off white solids resembling rock cocaine from his mouth into his hand. He retrieved [the rocks] from his hand[] and handed them to [Eiman].” Eiman gave to Ibarra a pre-recorded \$20 bill, then left the area.

¹ The facts have been taken from the transcript of the preliminary hearing.

² “A 20” is street vernacular for \$20 worth of narcotics.

It was stipulated for purposes of the preliminary hearing that the rocks sold to Eiman from Ibarra consisted of off-white solids weighing .20 net grams and containing cocaine in the form of cocaine base.

2. Procedural history.

Following the preliminary hearing, counsel for Ibarra made a motion to dismiss the case against Ibarra pursuant to Penal Code section 995. Counsel asserted the amount of cocaine sold to Eiman, when converted, amounted to only .007 ounces. Counsel, citing *People v. Rubacalba* (1993) 6 Cal.4th 62, 66, argued the amount of cocaine was so small it “[did]n’t even rise to the level of [a] remnant,” or usable quantity.³

The People argued that the charge was for the sale or transportation of narcotics. Although the amount of cocaine may have been small, “narcotics were sold, and [Ibarra] offered to sell” them. The prosecutor continued, “The gravamen is the criminal intent” and Ibarra certainly had the intent to sell cocaine to Eiman.

After taking the matter under submission and reviewing *Rubacalba, supra*, 6 Cal.4th at page 66, the trial court denied Ibarra’s motion to dismiss and ordered that he be held to answer to the charge of the sale or transportation of cocaine.

In an information filed December 26, 2007, Ibarra was charged with one count of transporting, selling or offering to sell cocaine in violation of Health and Safety Code section 11352, subdivision (a). At arraignment held on January 2, 2008, Ibarra entered a plea of not guilty to the charge.

On January 23, 2008, counsel for Ibarra filed a second motion to dismiss the charge. Relying on case law and formal jury instructions, he again argued that the amount of cocaine sold by Ibarra to Eiman was so small as to not be usable. On January 28, 2008, the People filed opposition to Ibarra’s motion, arguing, among other

³ In *People v. Rubacalba, supra*, 6 Cal.4th at page 66, the court recognized that “the . . . usable-quantity rule prohibits conviction only when the substance possessed simply cannot be used, such as when it is a blackened residue or a useless trace. It does not extend to a substance containing contraband, even if not pure, if the substance is in a form and quantity that can be used.”

points, that it is for the jury to decide whether the amount of cocaine sold was a usable amount.

At proceedings held on February 25, 2008, the trial court denied Ibarra's motion to dismiss the charges against him. Ibarra's counsel then indicated that a disposition had been reached. Ibarra was to plead guilty to the charged offense of the transportation or sale of cocaine and, in return, he would be granted three years formal probation on the condition that he serve 180 days in county jail.

After waiving his right to a "speedy an[d] public jury trial," the right to confront and cross-examine the witnesses against him, the power to subpoena witnesses and present a defense, and the privilege against self-incrimination, Ibarra pleaded guilty to one count of the sale or transportation of cocaine in violation of Health and Safety Code section 11352, subdivision (a).

Imposition of sentence was suspended and the trial court placed Ibarra on formal probation for a period of three years on the condition, among others, that he serve 180 days in county jail. Ibarra was given presentence custody credit for 118 days actually served and 58 days of good time/work time, for a total of 176 days. The trial court ordered Ibarra to pay a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a stayed \$200 probation revocation restitution fine (Pen. Code, § 1202.45), a \$50 lab fee (Health & Saf. Code, § 11372.5), and a \$20 court security fee (Pen. Code, § 1465.8, subd. (a)(1)).

Ibarra filed a timely notice of appeal on March 28, 2008.

This court appointed counsel to represent Ibarra on appeal on June 26, 2008.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed September 12, 2008, the clerk of this court advised Ibarra to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

APPELLATE REVIEW

We have examined the entire record and are satisfied Ibarra's counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.